APPEAL NO. 032237
FILED OCTOBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, and that the claimant reached maximum medical improvement (MMI) by operation of law on February 12, 2002, with an 18% impairment rating (IR). The claimant appealed the hearing officer's SIBs determination based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The hearing officer's determinations regarding MMI and IR were not appealed, and have become final pursuant to Section 410.169.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. The parties stipulated that the claimant sustained a compensable injury to his low back at L4-5 and L5-S1, right foot, and right ankle, and that the claimant underwent two surgeries, a fusion on May 7, 2002, and stimulator removal on March 4, 2003. It is undisputed that the qualifying period for the first quarter of SIBs was from November 4, 2002, and ended February 12, 2003. The claimant contends that during the qualifying period in dispute he had no ability to work as a result of his compensable injury. The claimant testified that he did not work or look for work during the qualifying period because he was pursuing extensive physical therapy, work conditioning, and work hardening.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that during the qualifying period for the first quarter, the claimant was capable of working in a light- to medium-duty capacity with lifting restrictions, and that other records show that the claimant was able to work during the qualifying period.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo

1974, no writ). This is equally true regarding medical evidence Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer concluded that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period, therefore, he was not entitled to SIBs for the first quarter. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Edward Vilano
Appeals Judge